

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHUCK GORDON MEAD,

Defendant and Appellant.

C069991

(Super. Ct. No. SF118143A)

Defendant Chuck Gordon Mead pleaded no contest to assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1); section references that follow are to this code.) In exchange, three enhancing allegations and five related counts were dismissed. That same day, defendant was sentenced to prison for four years. He was awarded 87 days' custody credit and 44 days' conduct credit.

On appeal, defendant contends (1) he is entitled to day-for-day conduct credit because no prior "strike" conviction was proved at trial, and (2) principles of equal protection entitle him to the additional conduct credit. We affirm the judgment.

FACTS AND PROCEEDINGS

The facts of defendant's offense are not at issue and need not be set forth in this opinion.

DISCUSSION

I

Day-for-Day Conduct Credits

Defendant contends he is entitled to day-for-day conduct credit because no prior "strike" conviction was proved at trial.

After briefing in this case was completed, our Supreme Court decided *People v. Lara* (2012) 54 Cal.4th 896 (*Lara*), which rejected a contention that "credit-limiting facts [such as a prior strike conviction] must formally be pled and proved." (*Id.* at p. 906.) *Lara* explained that the court has "imposed such a requirement only as to facts that define the permissible range of sentencing for an offense by increasing the sentence, prescribing a minimum term, or entirely precluding probation. [Citations.]" (*Ibid.*)

Lara went on to state: "The People were not, as we have explained, required to plead defendant's credit disabilities in the complaint or prove them to the trier of fact. As also noted, however, defendant is entitled to due process in the award of credits, which in this context entails sufficient notice of the facts that restrict his ability to earn credits and, if he does not admit them, a reasonable opportunity to prepare and present a defense. [Citations.] [¶] In the case before us, the historical fact that limits defendant's presentence conduct credits . . . is his prior conviction for first degree burglary [citations] because it is a serious felony [citation]. The People pled the prior conviction for the different purpose of triggering various statutory sentence enhancements. Nevertheless, as we have explained, this pleading was sufficient to inform defendant that his presentence conduct credits might be limited." (*Lara, supra*, 54 Cal.4th at p. 906.)

In this case, the “historical fact” that limits defendant’s presentence conduct credit is his 2005 conviction of “criminal threats” (§ 422). As in *Lara*, the People pleaded this prior conviction for the different purpose of triggering various statutory sentence enhancements. Under the reasoning of *Lara*, this pleading was sufficient to inform defendant that his presentence conduct credits might be limited. (*Lara, supra*, 54 Cal.4th at p. 906.) The fact the prior conviction was never proved at trial is of no consequence.

II

Equal Protection

Defendant contends prospective application of section 4019, the conduct credit provision of the Realignment Act, violates equal protection principles. This contention was rejected in *Lara*. (*Lara, supra*, 54 Cal.4th at p. 906, fn. 9.)

In *Lara*, the Supreme Court explained its rejection of the defendant’s equal protection argument as follows: “As we there [*People v. Brown* (2012) 54 Cal.4th 314, 328-330 (*Brown*)] explained, ‘ “[t]he obvious purpose” ’ of a law increasing conduct credits ‘ “is to affect the behavior of inmates by providing them with incentives to engage in productive work and maintain good conduct while they are in prison.” [Citation.] “[T]his incentive purpose has no meaning if an inmate is unaware of it. The very concept demands prospective application.” ’ (*Brown*, at p. 329, quoting *In re Strick* (1983) 148 Cal.App.3d 906, 913.) Accordingly, prisoners who serve their pretrial detention before such a law’s effective date, and those who serve their detention thereafter, are not similarly situated with respect to the law’s purpose. (*Brown*, at pp. 328-329.)” (*Lara, supra*, 54 Cal.4th at p. 906, fn. 9.)

Defendant is not entitled to additional presentence conduct credit.

DISPOSITION

The judgment is affirmed.

_____HULL_____, J.

We concur:

____NICHOLSON____, Acting P. J.

____ROBIE_____, J.